



COUNTY OF ORANGE

INTEGRATED WASTE MANAGEMENT DEPARTMENT

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October 1, 2003

Nancy Jestreby
Financial Assurances Section
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, CA 95814

RE: Financial Assurance Demonstrations for the Corrective Action Costs of the Coyote Canyon, Frank R. Bowerman, Olinda Alpha, Prima Deshecha and Santiago Canyon Landfills. Facility No's. 30-AB-0017, 30-AB-0360, 30-AB-0035, 30-AB-0019, and 30-AB-0018

Dear Ms. Jestreby,

Please find attached a draft Corrective Action Escrow Agreement that demonstrates IWMD's ability to demonstrate financial assurance for known corrective action for the above referenced landfills, per your request in your letter to Kevin Kondru dated April 28, 2003. This draft is for you and your Counsel to review and comment prior to our submittal to the Orange County Board of Supervisors. Your earliest response will be greatly appreciated.

If you have any questions regarding the draft escrow agreement, please call me at 714-834-4161 or e-mail me at sheila.refoy@iwmd.ocgov.com.

Sincerely,

Sheila Refoy
Manager of Budget/Finance & Management Services

Enclosures

Email: Patricia Henshaw, County of Orange Local Enforcement Agency
Dixie Lass, Santa Ana Region (8), California Regional Water Quality Control Board
John Odermatt, San Diego Region (9) California Regional Water Quality Control Board
Carol Tamaki, San Diego Region (9) California Regional Water Quality Control Board
Mike Giancola, IWMD
Dick Harabedian, IWMD
Kevin Kondru, IWMD
Dave Lowry, IWMD
Ron Pierre, IWMD

Attachment No. 10

CORRECTIVE ACTION
ESCROW AGREEMENT

DRAFT

The parties to this Escrow Agreement are the State of California Integrated Waste Management Board, referred to herein as BOARD, County of Orange, through its Integrated Waste Management Department referred to herein as IWMD, and County of Orange Treasurer's Office referred to herein as ESCROW AGENT.

RECITALS

- 1) The Board and IWMD desire to enter into an agreement to provide assurance of funds for corrective action at the County of Orange Landfills, (SWIS No. 30-AB-0017, 30-AB-0018, 30-AB-0019, 30-AB-0035, and 30-AB-0360), referred to herein as PROJECT.
- 2) The purpose of this agreement is to provide the terms and conditions for the deposit by IWMD of sufficient funds with the ESCROW AGENT to assure the BOARD that funds in the amount necessary to meet required expenses of Corrective Action will be available as needed.
- 3) The funds shall be deposited into the IWMD Corrective Action Escrow Fund 2XX, segregated by Landfill and maintained by the County of Orange, exclusively for Corrective Action.

SECTION I

IWMD AGREES:

- 1) To deliver monies, negotiable securities, or securities as specified in the attached EXHIBIT A, to the ESCROW AGENT according to the requirements of Title 27 California Code of Regulations (CCR) Section 22225 or 22226.
- 2) To request disbursement of funds from this ESCROW ACCOUNT only in accordance with activities specified in the corrective action plan most recently approved by the California Regional Water Quality Control Board.
- 3) To request advance disbursement of funds, as specified in the California Code of Regulations Title 27, CCR, section 22234, a-c, from the ESCROW AGENT based on the demonstration of an executed contract or agreement for services for activities to be performed in accordance with the most recently approved corrective action plan.
- 4) To furnish progress reports on a quarterly basis, to demonstrate that expenditures from this ESCROW ACCOUNT have been made in accordance with the most recently approved corrective action plan.
- 5) To maintain sufficient funds in the ESCROW ACCOUNT to assure the BOARD that funds in the amount necessary to meet the required expenses of the

PROJECT will be available as needed. This means that, at a minimum, it should be maintained in accordance with Title 27 CCR, section 22225 or 22226.

SECTION II

BOARD AGREES:

- 1) In the event that the Board determines that the County of Orange has failed or is failing to perform corrective action as described in the most recently approved corrective action plan, the Board may direct the ESCROW AGENT to pay to the Director of IWMD from the appropriate corrective action fund such amounts as are necessary to ensure corrective action, who shall then be obligated to use such funds for that purpose at the Orange County Landfills in accordance with the directive of the Board.
- 2) In the event that IWMD fails to perform the corrective action described in the corrective action plan, the Board may request a draw of funds in United States currency to pay for services or supplies needed to fulfill the most recently approved corrective action plan. The funds shall be made available to the Board within fifteen (15) days of the request. If reimbursement for BOARD supplied services is necessary following BOARD-initiated actions taken to fulfill the most recently approved corrective action plan, such requests shall be supported by documented billings submitted to the ESCROW AGENT at least fifteen (15) days in advance of payment. Payment in United States currency shall be made to the Board within fifteen (15) days of submission of documented costs. A copy of the documented billing shall be provided to the Director of IWMD concurrently.
- 3) Notwithstanding the provisions of Section II, (1) and (2), herein, IWMD shall retain access to the funds on deposit in the ESCROW ACCOUNT established and maintained in accordance with this ESCROW AGREEMENT for services and supplies purchased and/or provided to fulfill the corrective action plan most recently approved by the applicable state agencies.

SECTION III

ESCROW AGENT AGREES:

- 1) To place IWMD deposit funds into ESCROW ACCOUNT XXX immediately upon receipt from IWMD.
- 2) To hold IWMD deposited funds in trust for the benefit of the BOARD until such time as funds are requested by IWMD as specified in Section I (3), or by the BOARD as specified in Section II (1) and (2), or until this ESCROW AGREEMENT is terminated.

- 3) To make no charge to the BOARD for any services or out-of-pocket expenses incurred in carrying out the duties and obligations under this ESCROW AGREEMENT. ESCROW AGENT is authorized per California Government Code 27013 to deduct monthly charges for administrative fees from the Corrective Action Fund each month without additional documentation or authorization by the BOARD.
- 4) That it holds said IWMD deposited funds as trustee for the BOARD and that the rights of the BOARD to such funds are superior to any lien or claim of lien which ESCROW AGENT, IWMD, IWMD's governing body or creditors of IWMD or its governing body claim or may in the future claim against said funds.
- 5) To make payments from the ESCROW ACCOUNT as the IWMD shall direct, in writing, to provide for the payment of the costs of the PROJECT, pursuant to Section I, (3). Payments shall be made within fifteen (15) days of the request.
- 6) To make payments from the ESCROW ACCOUNT as the BOARD shall direct, in writing, to provide for the payment of the costs of the project, pursuant to Section II, (1) and (2). Payments shall be made within fifteen (15) days of the request.

SECTION IV

THE PARTIES HERETO MUTUALLY AGREE THAT:

- 1) All earnings and profits on amounts on deposit in the ESCROW ACCOUNT shall be retained as part of the ESCROW ACCOUNT until such time that the funds are needed to fulfill the corrective action requirements.
- 2) IWMD may, with BOARD's concurrence, withdraw excess funds from the custody of the ESCROW AGENT, provided that the requirements of Section I, (5) of this agreement are satisfied. BOARD concurrence will not be unreasonably withheld and denial for good cause shall be provided to IWMD not later than two (2) months following the request to withdraw excess funds.
- 3) This ESCROW AGREEMENT shall terminate if a substitution of mechanism is made, pursuant to the criteria of Title 27 CCR, Section 22227. ESCROW AGENT shall then promptly return to IWMD all funds including accrued interest, earnings and profits remaining in the ESCROW ACCOUNT upon notice that said remaining funds may be released. The BOARD shall not unreasonably delay the giving of such notice.
- 4) ESCROW AGENT is authorized per California Government Code 27013 to deduct monthly charges for administrative fees from the Corrective Action Fund each month without additional documentation or authorization by the BOARD.

- 5) This ESCROW AGREEMENT shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- 6) Separate counterpart signature pages may be used, however all pages shall constitute one and the same agreement.